

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GENCO IMPORTING INC. d/b/a MANITOBA'S
and RICHARD MANITOBA,

Plaintiff,

vs.

CITY OF NEW YORK, EMILY LLOYD, in her
capacity as Commissioner of the New York City
Department of Environmental Protection and as
Chairman of the New York City Environmental
Control Board, NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,

Defendants.

Civil Action No. 07-3560 (LAK)

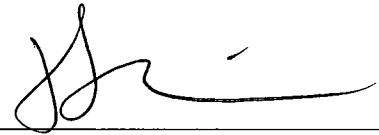
**DECLARATION OF JASON W. SUNSHINE IN SUPPORT
OF PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS THE AMENDED COMPLAINT**

Jason W. Sunshine, an attorney duly licensed to practice law before the courts of the State of New York and the United States District Court for the Southern District of New York, hereby declares under penalty of perjury:

1. I am associated with the law firm of Akin Gump Strauss Hauer & Feld LLP ("Akin") and represent plaintiffs Genco Importing Inc. d/b/a Manitoba's and Richard Manitoba in the above captioned matter.
2. Attached hereto as Exhibit A is a true and correct copy of the Inspection Report Noise Violation produced by Defendants for the alleged violation of New York City Administrative Code Section 24-241.1.

3. Attached hereto as Exhibit B is a true and correct copy of the Inspection Report Noise Violation produced by Defendants for the alleged violation of New York City Administrative Code Section 24-218.

Dated: September 26, 2006
New York, New York

A handwritten signature in black ink, appearing to read 'JS', is written over a horizontal line.

Jason W. Sunshine

Exhibit A

AR-359

INSPECTION REPORT NOISE INFORMATION

OWNER: **GENCO IMPORTING, INC.**
MANTO BAS
 ADDRESS: **99 AVE B**
N.Y. N.Y. 10009
 TELEPHONE: **21151115**
 EQUIPMENT: **cert # G684002 exp 3-31-08**
 Qty. _____ Mfg. Name _____ type _____ Mod. # _____ Ser. # _____
 Lic. # _____ Reg. # _____
 Type of Premises: Resid. ☐ Comm. ☒ Indust. ☐
 Floor: **ground** Room No. _____ Date: **10-23-06**
 Time of Inspection: From **2200 hrs** To **2200 hrs**
 Complainant Interviewed _____ YES ☒ NO ☐
 APC 27 Left _____ YES ☐ NO ☒

WEATHER CONDITIONS

Clear ☒ Rain ☐ Snow ☐

Wind Vel. _____

Wind Dir. _____

FIELD

Rever ☒ Direct ☐

SLM CALIBRATION

Before **94dba** After **94dba**

PLOT DIAGRAM

Noise meter
 B&K UNIT #4
 SRL # 166857
 MD # 2232
 Due 3-26-07

TEST DATA

NOISE LEVEL

CALCULATIONS

(Circle reading used for calculations)

	1	2	3
Tot.	53	53	53
Amb.	35	35	35
Source	53	53	53
Allowed	45	45	45

9:15pm - entered apt. calibrate meter
 speak with compl.

9:18pm - 52-53-52-52 - song ①

9:19pm - 52-53-53-52

9:20pm - 52-53-52-53

9:21pm - 37-36-45-45 AMBIENT ①

9:22pm - 53-53-53-53 - new song

9:23pm - 53-52-54-54

9:24pm - 52-52-53-53

9:25pm - 54-53-53-53 - new song

9:26pm - 52-52-34-35 AMBIENT ②

9:27pm - 52-51-51-53

9:28pm - 52-51-52-53 - new song

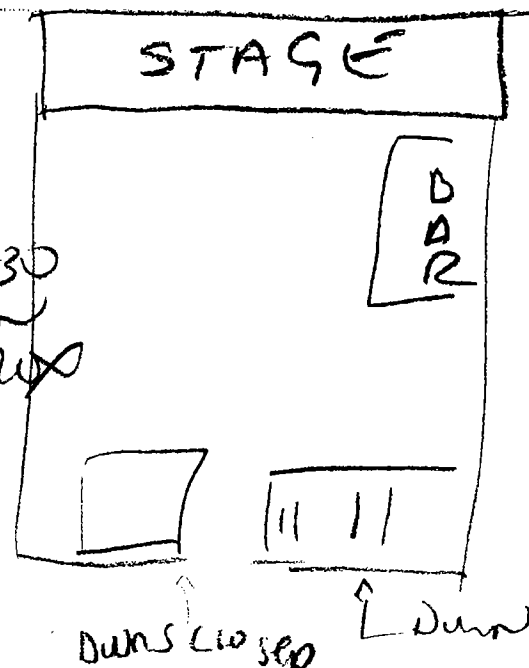
9:29pm - 54-53-53-53

9:30pm - 52-53-53-53 new song

9:33pm 35-35-35-35

9:34pm 38-35-38-35

9:35pm re calibrate
 meter



NUMBER 99		PREMISES STREET ADDRESS Ave B		ZIP CODE		CITY Manh	
VIOLATION NO. 179468X		DATE OF INSPECT. 10/23/06		TIME OF INSPECTION FROM 2:15 PM TO 2:20 PM			
AIR <input checked="" type="radio"/> NOISE		COMPLAINT INFORMATION 1463334		TYPE (CODE)		DATE	
UNSCHEDULED INSPECTION <input type="checkbox"/>		NOISE VIOLATION ONLY <input checked="" type="checkbox"/>		VICINITY		TITLE:	
PERSON INTERVIEWED: Compt. Kaven (Mgr.)							

INSPECTION DISCLOSED THAT

Specifically it is charged that the respondent played music in connection with a commercial establishment where the sound therefrom can be heard upon comp. apt. that exceeds 45 dba. Upon arrival took noise level readings inside comp. apt. (2nd floor) and meter indicated 33 dba total reading with a (35 dba) ambient background. The source is 35 dba. NYC allows (45 dba).

Issued NOV# 109468X

ECB Hearing 12/19/06 1:00 pm

DATE 10-23-06	BADGE NO. 151	INSPECTOR'S SIGNATURE Philip Linton	UPDATE CODE
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Owner's Name: Jenco Importing Inc

Address: 99 dba Mantolabas Ave B

City: N.Y. State: N.Y. Zip:

Type of Premises:		Source Size	
1. Mult. Dwelling	1. No. of Apts.		
2. School	2. No. of Pupils		
3. Hospital	3. No. of Beds		
4. <input checked="" type="checkbox"/> Commercial			
5. Power Plant			
6. Industrial			
7. Other			

Phone Contact: cert# G684002 exp 3-31-08

For Industrial Only - Stack Hgt.	INSPECTOR'S SIGNATURE Philip Linton	Date 10-23-06
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NO.	SOURCE EMIS. POINT NO.	FUEL	EQUIPMENT DESCRIPTION	VIOLATION TYPES	E. R. R.	PREV. VIOL.	C. OF O. DATE	UP C
⑤			person band consists of female singers, 2 guitars					
②			bass, drummer, marshall amps					

Exhibit B

INSPECTION REPORT
AR-359

PREMISES I.D. NO. _____

SOURCE CODE _____ TYPE _____

PREMISES NUMBER 99 S PREMISES STREET ADDRESS AVENUE B ZIP CODE 10009 BORO NYC

VIOLETION NO. _____ DATE OF INSPECT. 02/12/07 TIME OF INSPECTION FROM 21:30 HRS. TO 22:30 HRS.

AIR ☐ NOISE ☒ 00 COMPLAINT INFORMATION 1181816X TYPE (CODE) _____ DATE 5/534353 TIME _____

UNSCHEULED INSPECTION ☐ FOLLOW UP INSPECTION ☒ VICINITY _____

PERSON INTERVIEWED: COMPLAINANT 1 TITLE: KEVIN / BARTENDER

INSPECTION DISCLOSED THAT SPECIFICALLY IT WAS CHARGED THAT THE OWNER OF THE ABOVE ESTABLISHMENT (MAIN TOBAS BAR) CAUSED AND PERMITTED UNREASONABLE NOISE TO BE MADE AND CONTINUED IN VIOLATION OF SECT 24: (218) NYC NOISE CODE.

ON INSPECTION TOOK SLM READINGS IN COMPLAINANT'S HALLWAY WITH (MUSIC PLAYING) TOTAL OF 65 DBA - BACK ROOM AMBIENT WITH NO MUSIC (48 DBA) NYC ALLOWABLE IS (45) DBA - ON INSPECTION INSIDE 3 PIECE ROCK BAND PLAYING LIVE (LEAD GUITAR) (BASS GUITAR) (DRUMMER) ADVISED OF NYC NOISE CODE + VIOLATION

DATE 2-12-07 BADGE NO. 1019 INSPECTOR'S SIGNATURE [Signature] UPDATE CODE ☐

Owner's Name: GENCO IMPORTING INC. AKA MAIN TOBAS BAR

Address: 99 AVENUE B State NY Zip 10009 UPDATE CODE ☐

City NYC Phone Contact: _____

Name: _____ Phone: _____

For Industrial Only - Stack Hgt. 109 Inspector's Signature [Signature] Date 2-12-07 UPDATE CODE ☐

Type of Premises: 1. Mult. Dwelling 2. School 3. Hospital 4. ☒ Commercial 5. Power Plant 6. Industrial 7. Other

Source Size: 1. No. of Apts. 2. No. of Pupils 3. No. of Beds

NO.	SOURCE EMIS. POINT NO.	FUEL	EQUIPMENT DESCRIPTION	VIOLATION TYPES	E. R. R.	PREV. VIOL.	C. OF O. DATE	UPDATE CODE
			3 piece live rock band playing total 65 DBA ambient back room 48 DBA NYC allowable 45 DBA owner caused and permitted unreasonable noise to be made and continued.					
			Uio #181816X Uio of SECT 24: (218) NYC NC					
			Ref ECB 3-27-07 AT 1:00 pm					
			99 AVENUE B - NYC NY 10009					

AS 154		SPECIAL REQUIREMENTS CERTIFICATION	
OWNER: <u>Gene Impacting Inc. 1000 Teke Rd</u>	Type of Premises: <input type="checkbox"/> Fed. <input type="checkbox"/> Comm. <input checked="" type="checkbox"/> Indust. <input type="checkbox"/>		
ADDRESS: <u>99 Ave B</u>	City: <u>Grand</u>	Date: <u>2-12-07</u>	
TELEPHONE: <u>930 300 1030 PM</u>			
EQUIPMENT: <u>Musical Amplifiers 5 piece live rock band (lead guitar, bass guitar, drummer)</u>			
City: _____ Mfg. Name: _____ Type: _____ Mod. # _____ Ser. # _____			
Lic. # _____	Complainant Interviewed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Complainant 27 Left: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
WEATHER CONDITIONS		FIELD	
Clear <input checked="" type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Fog <input type="checkbox"/> Direct <input checked="" type="checkbox"/>			
Wind Vel. _____	SLM CALIBRATION		
Wind Dir _____	Before <u>94 DBA</u> After <u>94 DBA</u>		
TEST DATA		NOTES	
At _____	None		
Amb. <u>65 DBA</u>			
Source <u>48 DBA</u>			
Allowed <u>65 DBA</u>			
		B&K #28 Model #2232 Serial #1465260 CAL BY L.G. 11-15-06 CAL DUE DATE 11-15-07	

NOTE: BAND NAME: (NEUF-NEUF-9)
 Licour CERT Lic # G 684002 EXPIRES 3/31/2008